



mention the “affirmative act” element of aiding and abetting liability. This omission creates a danger that the jury might convict Mr. McLellan of aiding and abetting without finding this essential element satisfied. The danger is especially grave in the present case where Mr. McLellan is not alleged to have personally made any of the purportedly false or fraudulent representations at issue. The Court’s instructions that “Mr. McLellan need not have committed the securities fraud or wire fraud, been present when it was performed, or been aware of the details of its execution” to be convicted, and that the jury may consider his “[m]ere presence at the scene of the securities fraud or wire fraud” exacerbate the problem. Dkt. 466 at 40.

For the foregoing reasons, Mr. McLellan respectfully requests that this Honorable Court insert the requirement that Mr. McLellan took an affirmative act in furtherance of the crime into its Final Jury Charge on aiding and abetting.

Respectfully submitted,

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Dated: June 24, 2018

**CERTIFICATE OF SERVICE**

I, Martin G. Weinberg, hereby certify that on this date, June 24, 2018, a copy of the foregoing document has been served via Electronic Court Filing system on all registered participants.

**/s/ Martin G. Weinberg**  
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